

July 2, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON APPEAL OF NOTICE AND ORDER**

**SUBJECT:** Department of Development and Environmental Services File No. **E9701195**

**DOUGLAS DALE**

(In association with Linda Payton)  
Appeal of Notice and Order

**Location  
of Violation:** 19224 238th Avenue Northeast (approximately)

**Property Owner:** Douglas J. Dale  
19222 238th Avenue Northeast  
Woodinville, WA 98072

**Appellant(s):** Douglas J. Dale  
(same as above)

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal

**PRELIMINARY MATTERS:**

Notice of appeal received by Examiner:	March 16, 1998
Statement of appeal received by Examiner:	March 16, 1998

**EXAMINER PROCEEDINGS:**

Pre-Hearing Conference:	April 30, 1998 and June 23, 1998
Hearing Opened:	June 29, 1999, at 9:37 AM
Hearing Closed:	June 29, 1999, at 11:02 AM

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.  
ISSUES/TOPICS ADDRESSED:

- Automobile storage
- Uniform Housing Code violation
- Building Code violation
- Zoning Code violation
- Equipment storage
- Setbacks
- Animal uses and impacts

**SUMMARY:**

Code Enforcement Notice and Order affirmed; appeal DENIED; property cleanup ordered; compliance schedule established.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. On March 16, 1998, the Department of Development and Environmental Services, Code Enforcement Section, served a Notice and Order upon Douglas J. Dale regarding the 3.82-acre parcel located at approximately 19224 238th Avenue Northeast. The Notice and Order cites the Appellant with violations of KCC 16.04, 16.28.060, KCC 21A.18.110.J, KCC 21A.30.62, KCC 21A.31, KCC 21A.32.230, KCC 23.10.040 and Section 1001 of the Uniform Housing Code ("UHC"). These citations address housing of goats or other animals within 10 feet of the property line and within 35 feet of a residence; storage of several inoperable vehicles including a travel trailer and a tractor; accumulation of numerous piles of vegetation, debris and junk; construction of substandard lean-to structures; property not maintained, creating a public nuisance and an attractive nuisance to children; and, clearing and grading in excess of 100 cubic yards without a grading permit. The Department's Notice and Order requires the Appellant to take necessary actions to correct these code violations.
2. On that same day, March 16, 1998, Mr. Dale filed an appeal from the code enforcement order. See Exhibit No. 3. The appeal generally does not contest the facts in this matter, with two notable exceptions:
  - A. There are no animals on the property. Furthermore, the Appellant contends that there were no animals on the property as of the date the Department served the Notice and Order. Although the circumstances on the property violated the animal housing setback at one time, the hearing record lacks conclusive evidence that the standard was being violated
  - B. The Appellant contends that no grading violation occurred. A grading permit is required when 100 cubic yards of earth material are moved, removed, or imported to the site. See Finding 3.B, below.

3. The following facts are relevant to this review:

- A. There are no animals on the premises. The preponderance of evidence suggests that there were no animals on the property at the time of Notice and Order service. Thus, there is no animal pen, lean-to, or other structure housing animals within ten feet from any property line or within 35 feet from any adjacent residence. Although the circumstances on the property may have violated the animal housing setback standard at one time, the hearing record lacks conclusive evidence that the standard was being violated on the date of Notice and Order service.
- B. The hearing record contains no evidence supporting the Department's contention that 100 cubic yards of earth material were moved on the property. The Appellant testifies that no earth was moved; that only stumps remaining from the cutting and clearing conducted by a previous owner were removed and piled. The code enforcement officer suggests that at least that much earth material must have been disturbed as a result of stump pulling. The record contains no corroborating expert testimony or evidence regarding this disagreement.
- C. There are at least five inoperable vehicles stored on the property, some of which are seriously deteriorated. The property also contains a travel trailer and an inoperable tractor. There are three large piles of stumps on the property. In addition, there are numerous junk items strewn about, such as an old dishwashing machine, other appliances, a lawnmower and so on. These items are surrounded by overgrown grass, weeds and brush.
- D. One of the cited goat pens has collapsed since the March 16, 1998, Notice and Order. It is no longer, therefore, a safety hazard. However, it remains subject to the Notice and Order as junk and debris.
- E. A blue three-walled storage structure, in deteriorated condition, exists on the property. The Department states that, in order to comply with housing code requirements, the structure must either be removed from the premises or stabilized in a manner consistent with housing code standards. The Appellant intends to add a fourth wall. No building permit is required for such structures comprising 120 square or less.
- F. A moderately deteriorated travel trailer also rests on the subject property. The trailer is used occasionally by the Appellant. It is not connected to any public or private water or septic system. Applicable zoning standards prohibit the continuous placement of a travel trailer on a residentially classified property where no residence exists. Thus, the continuous placement of this travel trailer on the property constitutes both a health code violation and a zoning code violation.

The Department offers a useful compromise. During summer months, the Department permits continuous placement of a travel trailer on a vacant property up to 30 days. Thus, Code Enforcement Officer Wood testifies, the trailer could be removed from the property once every 30 days during the summer months to comply with applicable restrictions. The Appellant has agreed to do so .

- G. The property is classified RA-5.
4. Both the Department and the Appellant agree to the compliance schedule indicated in the order which follows below.

**CONCLUSIONS:**

1. The Department has not carried its burden of proof with respect to its citation for "clearing and grading in excess of 100 cubic yards without a valid grading permit." See Finding No. 3.B, above. For that reason, that citation and the Department's order to apply for and obtain a valid clearing/grading permit will be stricken from the Department's March 16, 1998, Notice and Order. The preponderance of this hearing record supports the Appellant's position that no clearing and grading in excess of 100 cubic yards occurred. Consequently, no grading permit, plan, fee, civil penalty or other measure will be required of Douglas J. Dale.
2. Likewise, the preponderance of evidence in this hearing record supports the conclusion that there are no goats or other animals presently kept on the premises. In fact, there is no compelling evidence in this hearing record that goats or other animals were kept on the subject property at the time the Notice and Order was served. For that reason, this citation and accompanying compliance order are also stricken from the Department's March 16, 1998, Notice and Order.
3. Except as noted in Conclusions No. 1 and 2, preceding, all of violations enumerated in Finding No. 1, above, are consistent with the preponderance of evidence and are therefore subject to the compliance order which follows below. These violations, individually and together, constitute a serious public health and safety nuisance.

**DECISION:**

- A. Regarding the housing of goats or other animals within 10 feet of a property line or within 35 feet of a residence, the appeal is GRANTED. No further action is required.
- B. Regarding "clearing and grading in excess of 100 cubic yards without a valid grading permit," the appeal is GRANTED. No further action is required.
- C. Regarding all other citations enumerated in Finding No. 1, above, the appeal is DENIED. The property shall be brought into compliance in accordance with the schedule indicated in the order which follows.

**ORDER:**

- A. **No later than September 15, 1999**, the Appellant shall complete the following compliance measures:
  1. Remove all inoperable vehicles;

2. Remove the travel trailer. During July and August the Appellant may establish the periodic removal routine described in Finding No. 3.F, above;
  3. Repair or remove the Ford tractor;
  4. Remove all "junk" such as appliances, inoperative hardware, deteriorating lumber, used lumber, lawn care equipment, etc.;
  5. Remove any substandard lean-to structure on the premises.
  6. Remove or stabilize the blue three-walled storage structure to the satisfaction of the Department, consistent with applicable building or housing code.
- B. **No later than October 15, 1999**, the Appellant shall completely remove or legally burn all stumpage piles on the property.
- C. The Department shall report compliance status to the Examiner **no later than seven days** following each of the deadlines specified in paragraphs A and B, preceding.
- D. Any civil penalties which may have accrued to this date are hereby permanently waived.
- E. Failure to comply with the compliance schedule indicated here shall result in a cumulative civil penalty in the amount of \$25 per day per each violation, plus billable costs of the Department of Development and Environmental Services, to be incurred until the violations are corrected.
- F. In the event compliance has not been accomplished **by December 1, 1999**, the Department shall abate the above violations by causing the necessary correction work to be done. The cost of the abatement work shall be charged as a personal obligation of the property owner and as a lien against the property.
- G. Failure to comply with those portions of the Department's March 16, 1998, Notice and Order that are affirmed by this order constitutes a misdemeanor which, upon conviction, is punishable by a fine not to exceed \$1,000 and or imprisonment in the County jail for a term not to exceed 90 days.
- H. This order does not limit the Department or the Prosecutor from pursuing any other civil or criminal penalty or remedy provided by law.

ORDERED this 2nd day of July, 1999.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 2nd day of July, 1999, by certified and first class mail, to the following parties and interested persons:

Douglas J. Dale  
19222 238th Avenue Northeast  
Redmond, WA 98052

TRANSMITTED this 2nd day of July, 1999, by first class or interoffice mail, to the following:

Linda Payton  
18100 NE 95th Street, #TT2095  
Woodinville, WA 98072

Sgt Kris Meyer  
Kent Animal Shelter  
21615 64th Avenue South  
Kent, WA 98032

Sgt. David Morris  
Kent Animal Shelter  
21615 64th Avenue South  
Kent, WA 98032

Elizabeth Deraitus  
DDES/LUSD Building Services  
Code Enforcement Section  
MS 1B Renton

Brenda Wood  
DDES/LUSD Building Services  
Code Enforcement Section  
MS 1B Renton

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

**MINUTES OF THE JUNE 29, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9701195 DALE CODE ENFORCEMENT APPEAL:**

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing was Brenda Wood, representing the County; Sgt. David Morris, Sgt. Kris Meyer, Douglas Dale, and Linda Payton.

The following exhibits were offered and entered into the hearing record **June 23, 1998**:

- Exhibit No. 1 Department of Development and Environmental Services Staff Report the Hearing Examiner, dated April 30, 1998.
- Exhibit No. 2 Notice and Order, issued March 2, 1998
- Exhibit No. 3 Notice of Appeal received March 16, 1998
- Exhibit No. 4 Letter dated November 12, 1997, to Douglas Dale from Brenda Wood (DDES)
- Exhibit No. 5 E-mail from Jim Kruger to Brenda Wood dated December 2, 1997

- Exhibit No. 6 E-mail transmittals between Jim Kruger, Dan Graves and Brenda Wood dated December 4, 1997
- Exhibit No. 7 Letter dated February 24, 1998, from Brenda Wood (DDES) to Douglas Dale
- Exhibit No. 8 Letter dated march 5, 1998, from the King County Ombudsman's Office to Lisa Taubenheim

The following exhibits were offered and entered into the hearing record **June 29, 1999:**

- Exhibit No. 9 Photos of property submitted by Brenda Wood (DDES) (5 pages)
- Exhibit No. 10 Photos of property (4 pages) submitted by Ms. Payton

RST:daz  
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